

**Florida's Request To Assume Administration of a Clean Water Act Section 404 Program
(85 FR 57853, September 16, 2020) EPA-HQ-OW-2018-0640**

Code 6a General

EPA should retain oversight of permitting

Commenters (0107, 0171, 0373, 0395, 0055, 0067, 0112, 0291, 0360, 0386, 0508, 0550, 0430-Lisa Rinaman, 0429-Jen Lomberg, 0430-Jeffrey Blank, 0430-Anna Upton, 0430-Chris Pettit, 0430-Allison Kelly) stated that EPA should retain oversight responsibilities of permitting in Florida. Commenter (0373) considered it necessary, especially given the rate of climate change, that Florida water be protected by the EPA because it is the regulatory body that will hold the highest standard of scrutiny. Commenter (0055) considered it necessary to ensure consistency and uniformity in oversight and application of legal standards. Commenter (0395) noted that more destruction will occur if EPA and USACE relinquish oversight.

Commenter (0418) added that the current dual permitting system between federal and state agencies provides oversight that the Florida state regulatory system cannot provide alone.

Commenter (0067) finds Florida unable to administer appropriate oversight to current environmental responsibilities and stated that they should not be given more. The commenter noted EPA and USACE offer too much latitude to the state, and vague statutory requirements create a concern that administrators, legislators, and developers may take advantage of well-meaning personnel. Commenters (0291, 0360) felt EPA and USACE is better equipped to handle permits associated with wetlands because FDEP is not able to handle the responsibility.

Commenter (0386) objected to EPA's decision to waive almost all oversight of Florida's program otherwise available under the Clean Water Act, especially since Florida has vast waterways, wetlands, and listed species. The commenter (0386) requested EPA retain the maximum monitoring and oversight possible for a minimum of two years before relinquishing its Section 404(j) authority. Commenters (0550, 0057) worried that the amount of oversight and public review would be limited if the proposal were accepted.

Commenter (0428) noted that federal review has proved invaluable in stopping or modifying Florida programs that would have further endangered water resources, such as the Basin Management Action Plans that were deficient in strategy and funding to accomplish what the state legislature had demanded. Commenter (0035) suggested that EPA needs to continue their role in these permitting decisions.

Commenter (0429-Jen Lomberg) discussed the problem in Saint Augustine and Saint Johns County have with flooding on regular, sunny days and devastating floods during storm events. The commenter explained that the state is losing a few acres of wetlands every week over the course of years, so the current system is not protective enough and the proposed change offers even less protection. One commenter (0430-Jeffrey Blank) stated that with increased

development statewide, the protection and restoration of Florida's wetlands and water resources must be given the greatest possible attention, rather than removing federal oversight. One commenter argued that federal review and protections are necessary to protect resources from local political pressure and special interest, given the rapid population growth and development.

Commenter (0430-Lisa Rinaman) recognized that federal Section 404 permits and state Environmental Resource Permits overlap. However, commenter (0430-Lisa Rinaman) asserted that the additional federal oversight is critical for adequate protection of water resources, providing important checks and balances. Commenter (0430-Lisa Rinaman) gave an example wherein a local Water Management District approved a permit that would have allowed the developer to destroy high-quality urban wetlands, but USACE denied the developer's application to destroy these acres of federally defined wetlands, largely due to their value.

EPA's ability to provide permitting oversight is questionable

Commenter (0209, 0429-Eric Hughes) was concerned that staffing levels in the EPA Regional office in Atlanta are insufficient to provide adequate oversight if the Section 404 Program is delegated to Florida. The commenter (0429-Eric Hughes) mentioned that he had worked for the EPA Region 4 wetlands program for 30 years and says that only a small number of people were available to review the Corps of Engineers' public notices. The commenter (0429-Eric Hughes) questioned how EPA could do a legitimate job of overseeing the program with the current level of staffing. Commenter (0209) was specifically concerned that EPA Region 4 wetlands program staff would be inadequate for reviewing the 1,000-2,000 individual Section 404 permit applications that would be processed annually and asked what commitments EPA Region 4 management would make to hire and train a sufficient number of wetland staffers needed for meaningful oversight.

Permitting rules unlawfully expand the use of emergency permits and unlawfully limit permit conditions

One commenter (0386) claimed that Florida statutes unlawfully expand the use of emergency permits and provided examples of how the state requirements allow a broader set of situations in which an emergency permit may be granted, making them less stringent due to being granted more quickly with less time for process and review. The commenter (0386) also explained that the state's regulations omit requirements that appear in federal regulations. As an example, the commenter (0386) pointed out that FDEP's regulations failed to include the requirement that discharges minimize adverse impacts through restoration, and instead only includes minimization through mitigation. The commenter (0386) also stated that the state fails to incorporate the federal requirement regarding how much detail permit applications must include.